IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3711 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PRANLAL AMRUTLAL JOSHI

Versus

STATE OF GUJARAT

Appearance:

MS SADHANA SAGAR for Petitioner

MR MA BUKHARI for Respondent No. 1

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 18/07/2000

ORAL JUDGEMENT

#. Heard the learned counsel for the parties. The facts of the case as stated by petitioner in the special civil application are as under:

The Government of India, with a view to

felicitate the freedom fighters who had taken part in the freedom movement floated a scheme known as Pension for Freedom Fighters and pension is paid to the Freedom Fighters. The petitioner took part in movement of Freedom for India in the year 1942 when he was a young student of 21 years of age and President of Students' Union for Primary Training for teachers, and during the course of that agitation, was injured on the head and was hospitalized and thereafter arrested. Pursuant to the scheme he applied for recognition as freedom fighter and for pension within time stipulated. However, he did not have with him any evidence of his imprisonment but he produced certificates / affidavits of the persons who were co-prisoners with him. The old record of 22.12.1942, the day on which he was produced before the Court is not available with the Government. Hence he applied on the basis of the certificates and /or affidavits of the co-prisoners for grant of Freedom Fighters' Pension. His application came to be rejected on the ground that there was no material to show that he had undergone the imprisonment. One Shri Manubhai Vithalani, who was a co-prisoner with the petitioner and who also could not produce any material of his having undergone imprisonment, such record not being available with the Government, was granted pension on the identical and similar evidence in the form of certificates and/or, affidavits of co-prisoners as what it is produced by the petitioner. However, in the case of petitioner, that benefit has been declined to him. Hence this special civil application.

#. In support of his claim for pension, the petitioner produced the following documents:

(a) One Shri Natvarlal G. Sejpal who was a co-prisoner with the prisoner has given certificate to the petitioner dt.1.10.89. A copy of the certificate is annexed as Annexure-B to the special civil application.

(b) One Shri Vithalbhai P. Kalariya Ex.MLA from Jamjodhpur who was knowing the petitioner as a Pupil Uchhrangray Naval Shanker Dhebarbhai also issued certificate to the petitioner dt.10.4.1989. A copy of the certificate is annexed as Annexure-C to the special civil application.

(c) Shri Markhibhai Jatbhai Goria MLA from Bhanvad District, Jamnagar had issued certificate dt.6.5.1989 to the petitioner. A copy of the

certificate is annexure-D to the petition.

(d) Copy of the letter dt.2.6.1990 written by Shri P.C.Barot President of Janta Dal Rajkot to Shri Prabodhbhai Pandya Parliamentary Secretary to Gandhinagar to the effect that the cases of the petitioner and Manubhai J. Vithalani are still pending and action should be taken. Copy of the letter is annexed hereto as Annexure-E.

(e) The petitioner approached the Collector Rajkot for getting the certificate of his imprisonment but the Collector Rajkot by his letter dt.22.6.1991 informed the petitioner that the said record of freedom movement as the same has been transferred to the office of Inspector Records Rajkot and the petitioner should approach that office. A copy of the letter is annexed hereto as Annexure-F.

(f) The Superintendent, Western Circle Record, Rajkot informed the petitioner by letter dt.4.7.1991 that the record of 22.12.1942 was not available with them and therefore, no certificate could be given. In other words the record of the petitioner having undergone imprisonment is not forthcoming from any source. A copy of the letter is annexed to the petition as Annexure-G.

(g) The petitioner wrote a letter on 25.12.1991 to the Chief Minister of Gujarat and requested that he may be given pension as a freedom fighter. Copy of this letter is annexed hereto as Annexure-H.

#. In paragraph-7, the petitioner made reference to the letter of Chhaganbhai M. Patel, the then president of Rajkot District Panchayat who wrote a letter to the then Chief Minister on 20th October, 1993 bringing his attention that the petitioner had produced certificates of co-prisoner and he should be given pension. In this paragraph, the petitioner also mentioned that he was in imprisonment from 1.4.42 to 31.7.42 and he was produced by the police before the court on 22nd December 1942 but this material is not available with the petitioner and he has produced certificate of his co-prisoner and that of one Manubhai J. Vithlani of Rajkot who was co-prisoner with the petitioner. Reference has also been made by petitioner to the correspondence which was made between him and the office of the Chief Minister in sub-paragraphs (b) and (c) of paragraph-7.

#. In reply to the special civil application, the respondents have not dealt with each and every document except one certificate given by Natvarlal Sejpal, co-prisoner. The reason given for discarding the certificate may be cogent and justified but nothing has been said by respondents in reply in respect of other documents. It is not the case of respondents that on the basis of certificates and affidavits of co-prisoners, the freedom fighters who are not able to produce the Government record for their imprisonment or for their arrest, surrender before the court, have not been granted pension. These documentary evidence produced have to be considered and then only an order has to be passed. That precisely has not been done in the present case.

#. As a result of aforesaid discussion, this writ petition succeeds and the same is allowed and the respondent No.1 is directed to reconsider the application of the petitioner for Freedom Fighters' pension by considering each and every document mentioned in paragraphs-4 and 7 of this special civil application. Where these documents are not acceptable, the respondent No.1 is to record reasons. In fact, where the claim of the petitioner is not acceptable, the respondent has to pass a reasoned order. However, where the claim of the petitioner is accepted, he shall be entitled for Freedom Fighters' Pension with effect from 9.1.89, i.e. the date on which he made his first application. The arrears payable to the petitioner are to be calculated within a period of one month from the date of the order of respondent No.1 and the amount has to be paid within next one month. The petitioner shall also be entitled for interest on the amount of arrears of Freedom Fighters' Pension @ 12% p.a. till the date of payment thereof. Liberty is granted to the petitioner for revival of the special civil application in case where order passed by respondent No.1 in this case is adverse to him. Rule is made absolute accordingly. As the petitioner is provided free legal aid in this matter, no order as to costs.

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(sunil)